

ADMINISTRATIVE PANEL DECISION

Trove Brands, LLC v. 林剑贤 (jian xian lin)

Case No. D2024-1834

1. The Parties

The Complainant is Trove Brands, LLC, United States of America (“United States”), represented by Knobbe, Martens, Olson & Bear, LLP, United States.

The Respondent is 林剑贤 (jian xian lin), China.

2. The Domain Name and Registrar

The disputed domain name <owalalife.net> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on April 30, 2024. On May 1, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 6, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 6, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint in English on May 8, 2024.

On May 6, 2024, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the disputed domain name is Chinese. On May 7, 2024, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent in English and Chinese of the Complaint, and the proceedings commenced on May 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 5, 2024.

The Center appointed Joseph Simone as the sole panelist in this matter on June 12, 2024. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant, Trove Brands, LLC., owns a line of active lifestyle brands primarily engaged in the business of designing, creating, developing, marketing, and selling beverage containers and associated products and accessories.

The Complainant claims rights by virtue of an exclusive license in the OWALA marks. The Complainant cites several United States federal registrations for trademarks comprising or containing OWALA, including but not limited to the following, owned by its licensor, Runway Blue, LLC:

- United States Trademark Registration No. 6,181,745 for OWALA, in Class 21, registered on October 20, 2020;
- United States Trademark Registration No. 7,049,270 for OWALA, in Classes 18 and 21, registered on May 9, 2023; and
- International Trademark Registration No. 1527016 for OWALA, in Classes 9, 18, 21, and 25, designating inter alia Australia, Canada, China, European Union, and the Russian Federation, registered on February 21, 2020.

The Complainant also operates domain names that contain the OWALA mark in its entirety, such as <owalalife.com> (registered on August 8, 2019), which is the official website of the Complainant.

The disputed domain name was registered on October 9, 2023.

According to evidence provided by the Complainant, at the time of filing the Complaint, the disputed domain name resolved to a website featuring an online store advertising and selling products bearing the OWALA marks at discounted prices.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

The Complainant contends that the disputed domain name registered by the Respondent is identical or confusingly similar to the Complainant's OWALA trademarks, and that the addition of the Top-Level Domain ("TLD") ".net" does not affect the analysis as to whether the disputed domain name is identical or confusingly similar to the Complainant's trademarks.

Furthermore, the Complainant argues that the addition of the term "life" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's OWALA mark.

The Complainant asserts that it has not authorized the Respondent to use the OWALA mark, and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services.

The Complainant also claims there is no evidence indicating that the Respondent has any connection to the OWALA mark in any way, and that there is no plausible good-faith reason for the Respondent to have registered the disputed domain name. The Complainant therefore concludes that the registration and any use of the disputed domain name whatsoever must be in bad faith.

B. Respondent

The Respondent did not reply to the Complainant's contentions

6. Discussion and Findings

Language of the Proceeding

Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement, subject to the authority of the Panel to determine otherwise based on the circumstances.

The language of the Registration Agreement for the disputed domain name is Chinese. Hence, the default language of the proceeding should be Chinese.

However, the Complaint was filed in English and the Complainant requested that the language of the proceeding be English for the following reasons:

- the disputed domain name is registered in Latin script including the English dictionary word "life";
- the website found at the disputed domain name is entirely written in English and the payment currency is given as USD; and
- it is also important to ensure fairness to the Parties and maintain an inexpensive and expeditious avenue for resolving domain name disputes, and deciding Chinese as the language of the proceeding would impose an undue burden on the Complainant.

The Respondent was notified in both Chinese and English of the language of the proceeding and the commencement of the proceeding and did not comment on the language of the proceeding or submit any response in either Chinese or English.

In exercising its discretion to use a language other than that of the registration agreement, the Panel must exercise judiciously and in the spirit of fairness take into account all relevant circumstances of the case, including the Parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Considering the circumstances of this case, the Panel determines that the language of the proceeding shall be English, and as such, the Panel has issued this decision in English. The Panel further finds that such determination would not create any prejudice to either Party and should ensure that the proceeding takes place with due expedition.

6.2 Substantive Issues

A. Identical or Confusingly Similar

The Complainant claims rights by virtue of being an exclusive licensee of the OWALA marks, but has not provided any evidence of such license agreement nor any attestation from the trademark owner, Runway Blue, LLC.

Per paragraphs 10 and 12 of the Rules on the powers granted to UDRP panels, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. [WIPO Overview 3.0](#), section 4.8. The Panel notes that the Complainant and the trademark owner share the same company address in Utah, United States, and that the trademark owner is also the owner of a trademark corresponding to the Complainant's name. Furthermore, the Complainant's website to which the domain name <owalalife.com> resolves includes the following copyright notice: "© 2023 Trove Brands, LLC. All Rights Reserved."

Considering the foregoing, the Panel finds that the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.4.

Disregarding the TLD ".net," the disputed domain name incorporates the Complainant's trademark OWALA in its entirety. Thus, the disputed domain name should be regarded as confusingly similar to the Complainant's OWALA trademark. The inclusion of the additional term "life" does not prevent a finding of confusing similarity.

The Panel therefore finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in the OWALA trademark and in showing that the disputed domain name is confusingly similar to its mark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the challenging task of "proving a negative," requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

The Complainant asserts that it has not authorized the Respondent to use its trademarks and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services. Having reviewed the available record, the Panel finds that the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent did not file a response and has therefore failed to assert factors or put forth evidence to establish that he enjoys rights or legitimate interests in the disputed domain name. In this case, there is no evidence adduced to show that the Respondent, prior to the notice of the dispute, has used or has demonstrated its preparation to use the disputed domain name in connection with a bona fide offering of goods or services. The disputed domain name resolves to a website allegedly offering various retail items for sale at a discount, some of which are identified through the Complainant's trademark, all the while failing to disclose any relationship (or lack thereof) with the Complainant. Given the composition of the disputed

domain name and the use to which it has been put, it is clear that the Respondent sought to create an misleading inference of association or ownership by the Complainant for its commercial advantage.

There is also no evidence adduced to show that the Respondent has been commonly known by the disputed domain name or the Respondent is making a legitimate noncommercial or fair use of the disputed domain name. As such, the Panel concludes that the Respondent has failed to rebut the Complainant's prima facie showing of the Respondent's lack of rights or legitimate interests in the disputed domain name, and that none of the circumstances of paragraph 4(c) of the Policy is applicable in this case.

Accordingly, and based on the Panel's findings below, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy states that any of the following circumstances in particular, but without limitation, shall be considered as evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances in which bad faith may be found. Other circumstances may also be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

For reasons discussed under this and the preceding heading, the Panel believes that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain name.

When the Respondent registered the disputed domain name, the OWALA trademarks were already widely known and directly associated with the Complainant's activities. UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Given the extensive prior use and fame of the Complainant's marks, in the Panel's view, the Respondent should have been aware of the Complainant's marks when registering the disputed domain name.

The Respondent has provided no evidence to justify his choice of the term “owala” in the disputed domain name.

The Complainant’s registered trademark rights in OWALA for its products and services predate the registration date of the disputed domain name. A simple online search (via services such as Google or Baidu) for the term “owala” would have revealed that it is a popular brand.

The Panel takes particular note of the fact that the Respondent has used the disputed domain name for a website promoting products bearing the OWALA marks at discounted prices.

The Panel is therefore of the view that the Respondent registered the disputed domain name with full knowledge of the Complainant’s trademark rights.

In light of the foregoing facts, there are no plausible good faith reasons for the Respondent to have registered and used the disputed domain name. The Panel finds in the circumstances that, by registering and using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s trademarks as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website (paragraph 4(b)(iv) of the Policy).

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <owalalife.net> be transferred to the Complainant.

/Joseph Simone/

Joseph Simone

Sole Panelist

Date: June 25, 2024